Supreme Court, U.S.
F I L E D

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No.

IN THE

Supreme Court of the United States

CENTRAL NEWSPAPERS, INC.,

Petitioner,

v.

MICHAEL J. JOHNSON and McKINLEY KELLER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD CIRCUIT COURT OF APPEAL OF THE STATE OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the First Amendment protects newspapers from liability under state "wiretapping" laws when they accurately report information of public concern that a source -- not a newspaper -- acquires by unlawful interception.

PARTIES TO THE PROCEEDINGS

Respondents Michael Johnson ("Johnson") and McKinley Keller ("Keller") are plaintiffs in two actions against the same defendants. The two actions were consolidated below.

Petitioner Central Newspapers, Inc. ("CNI") publishes *The Alexandria Daily Town Talk* and is a defendant in each of the two consolidated actions below.

Avoyelles Publishing Company ("Avoyelles") publishes the *Avoyelles Journal* and is a defendant in the consolidated actions below.

Carol Aymond, Jr. ("Aymond") is a defendant in the consolidated actions below.

Randy Decuir is the publisher of the *Avoyelles Journal* and is a defendant in the consolidated actions below.

John Doe, aka "Alphonse A. Alphonse," is a writer for the *Avoyelles Journal* and is a defendant in each of the two consolidated actions below.

RULE 29.6 DISCLOSURE STATEMENT

CNI has no parent corporation, and no publicly held corporation owns 10% or more of CNI's stock.

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties to the Proceedings	ii
Rule 29.6 Disclosure Statement	ii
Table of Contents	iii
Table of Citations	iv
Appendix	vi
Petition for Writ of Certiorari	1
Opinions Below	1
Statement of Jurisdiction	1
Constitutional Provisions Involved	2
Statutes Involved	2
Statement of the Case	2
A. Factual Background	2
B. Proceedings Below	3
Reasons for Granting the Writ	5

I. The Court of Appeal's Decision Conflicts with this Court's Decisions Holding That Publication of Truthful Information Regarding Matters of Acute Public Concern Is Protected Under the First Amendment..... 7

II. The Information at Issue in this Case Is a Matter of Grave Public Concern, and the State Lacks an Interest of "The Highest Order" in Punishing Its Publication..... 9

III. The Court of Appeal's Holding Conflicts with the Decisions of Lower Federal Courts on *Nearly* Identical Facts..... 11

Conclusion 17

TABLE OF CITATIONS

Cases Cited: *Page(s)*

Boehner v. McDermott, 1998 WL 436897 (D.D.C. July 28, 1998)..... 7, 15, 16

Bartnicki v. Vopper (3rd Cir. No. 98-7156)..... 7

Butterworth v. Smith, 494 U.S. 624 (1990)..... 10

Carey v. Population Services Int'l, 431 U.S. 678, 684-85 (1977)..... 15

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).....1, 5, 8, 9, 10,16

Florida Star v. B.J.F., 491 U.S. 524 (1989) 5, 6, 7, 8, 9, 10, 12, 13, 15, 16

Gertz v. Robert Welch, Inc., 418 U.S. 323, 334 (1974)..... 14

In re Kading, 235 N.W. 2d 409, 417-18 (Wis. 1975) 10

Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 839 (1978)..... 6, 8, 9, 10, 13

Natoli v. Sullivan, 159 Misc. 2d 681, 606 N.Y.S. 2d 504 (Sup. Ct. 1993)..... 11

New York Times Co. v. Sullivan, 376 U.S. 254 (1964)..... 14

New York Times Co. v. United States, 403 U.S. 713 (1971)..... 8

Peavy v. New Times, Inc., 976 F. Supp. 532 (N.D. Tex. 1997).....11, 12, 13, 15, 16

Peavy v. WFAA-TV, Inc. 37 F. Supp. 2d 495 (N.D. Tex. 1999)..... 13, 14, 15

Pell v. Procunier, 417 U.S. 417, 834 (1974)..... 14

Smith v. Daily Mail Pub. Co., 443 U.S. 97 (1979).. 8, 12, 13, 14

Statutes Cited:

18 U.S.C. §§ 2510-2522..... 7
28 U.S.C. § 1257..... 1
28 U.S.C. § 2403(b)..... 1

Louisiana Revised Statutes Annotated
§ 15:1302 ..... 3, 6
§ 15:1303 7
§ 15:1312 6

APPENDIX

Appendix A — Decision of the Louisiana Court of Appeal Decided December 23, 1998 ..... 1a

Appendix B — State Trial Court's Reasons for Ruling Dated August 12, 1997 ..... 24a

Appendix C — Louisiana Supreme Court's Denial of CNI'S Application for Writ of Certiorari Decided April 1, 1999 ..... 32a

Appendix D — Louisiana Supreme Court's Denial of Avoyelles Publishing Company's Application for Writ of Certiorari Decided April 1, 1999 ..... 33a

Appendix E — Decision of the Louisiana Court of Appeal Decided April 1, 1998 ..... 34a

Appendix F — Louisiana Supreme Court's Denial of CNI'S Application for Writ of Certiorari Decided June 19, 1998 ..... 41a

Appendix G — Relevant Portions of the Louisiana Electronic Surveillance Act 42a

Appendix H — Reproduction of November 7, 1996 Article as printed in the *Alexandria Daily Town* 47a

PETITION FOR WRIT OF CERTIORARI

Petitioner Central Newspapers, Inc. ("CNI") respectfully petitions for a writ of certiorari to review the decision of the Louisiana Court of Appeal entered in this case on December 23, 1998. The Louisiana Supreme Court denied an application for writ on April 1, 1999.

OPINIONS BELOW

The opinion of the Louisiana Court of Appeal is reported at 722 So.2d 1224 (La. Ct. App. 1998). (App. A) The Louisiana Supreme Court's denial of CNI's application for writ seeking review of a judgment is reported at - So.2d -, No. 99-C-0199, 1999 WL 250284 (La. Sup. Ct. April 1, 1999). (App. C)

STATEMENT OF JURISDICTION

The Louisiana Court of Appeal issued its opinion and judgment on December 23, 1998. The Louisiana Supreme Court denied a discretionary application for writ seeking review of a judgment on April 1, 1999. Pursuant to Supreme Court Rule 13.1, this Petition has been filed within 90 days after entry of the order denying discretionary review.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

Because the proceeding draws into question the constitutionality of the Louisiana Electronic Surveillance Act, a statute affecting the public interest, and neither the State of Louisiana nor any agency, officer or employee thereof is a party, Petitioner notes that 28 U.S.C. § 2403(b) may be applicable.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment of the United States Constitution provides, in relevant part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

La. Rev. Stat. Ann. §§ 15:1303, 15:1307 and 15:1312 (App. G)

STATEMENT OF THE CASE

A. *Factual Background*

On November 6, 1996, CNI, publisher of *The Alexandria Daily Town Talk*, attended a press conference in Bunkie, Louisiana called by Carol Aymond, Jr. ("Aymond"), an attorney who had campaigned unsuccessfully against respondent Johnson for the district judgeship in Avoyelles Parish, Louisiana. (App. H)

At the press conference, Aymond revealed that he had obtained a tape recording of a telephone conversation between respondents Johnson and Keller.[1] Suggesting that the taped conversation contained evidence of corruption and possible vote-buying, Aymond played the recording of the telephone conversation at the November 6 press conference and distributed transcripts to the news media. For purposes of this Petition, CNI does not dispute that Aymond obtained the tape in violation of the Louisiana Electronic Surveillance Act, LSA-R.S. 15:1302, et seq. (App. 2a)

CNI and Avoyelles Publishing Company ("Avoyelles"), publisher of the *Avoyelles Journal*, were present at the news conference with other members of the media. Each published news articles regarding the press conference and portions of the tapes aired by Aymond. (App. 2a)

It is undisputed that neither CNI nor Avoyelles took part in any unlawful interception of the conversation between Johnson and Keller. CNI learned of the tape for the first time at the November 6, 1996 press conference. (App. 2a-3a)

B. Proceedings Below

Johnson and Keller each filed suit in the 12th Judicial District Court, Parish of Avoyelles, against Aymond and the newspaper publishers, seeking damages under the Louisiana Electronic Surveillance Act, LSA-R.S. 15:1302, et seq. (the "Act). The Johnson and Keller suits have been consolidated. The suits do *not* allege that either of the newspapers had any

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[1] Respondent Michael Johnson ("Johnson") was the District Judge but was removed from that position for ethical misconduct by the Louisiana Supreme Court in November 1996. Respondent McKinley Keller ("Keller") is an Avoyelles Parish Police Juror and political ally of Johnson. (App. H)

involvement in preparing the unlawful tape recording. Rather, the suits allege that CNI violated the Act by publishing the contents of the communications revealed at the press conference. (App. 2a-3a)

In response to the suit, on June 10, 1997, CNI filed a Peremptory Exception of No Cause of Action. Though its Answer had preserved the issue of the constitutionality of the Act as applied, the Peremptory Exception did not raise a federal constitutional defense. The trial court granted CNI's Peremptory Exception on August 12, 1997, and CNI was dismissed from the case by Judgment dated August 22, 1997. (App. B) Despite the narrow scope of CNI's Peremptory Exception, the trial court's ruling was based on both state law and federal constitutional grounds. Respondents appealed, and on April 1, 1998, the Third Circuit Court of Appeal reversed the trial court's decision, holding that CNI had not raised a constitutional defense and that the trial court should not have reached the federal question. (App. E) In that appeal, CNI preserved the constitutional issue but raised only its state law defenses. The claim against CNI was then remanded to the trial court for further proceedings.

On August 25, 1997, Avoyelles, CNI's co-defendant, moved for summary judgment seeking dismissal from the suit. Like CNI's peremptory exception, Avoyelles' Motion raised only state law defenses. The trial court likewise granted Avoyelles' motion and rendered judgment dismissing Avoyelles on October 23, 1997. Again, plaintiffs appealed. (App. 3a)

In an opinion dated December 23, 1998, the Louisiana Court of Appeal reversed the trial court's dismissal and remanded the case to the trial court. (App. A) The Court of Appeal's sweeping opinion does not limit itself to the state law issues raised in Avoyelles' motion for summary judgment, but included a final adjudication of the federal constitutional issues, in advance of trial, that are conclusive of the federal

constitutional defenses of both CNI and Avoyelles. The Court of Appeal decided the constitutional issue presented in this Petition based upon the trial court record made in connection with CNI's Peremptory Exception, in which the trial court had considered the federal consitutional claim *sua sponte*. (App. 3a-5a)

In its opinion, the Court of Appeal held that a balancing of First and Fourth Amendment rights resulted in no protection for the newspapers. (App. 6a-9a) Because the Court of Appeal had decided substantive federal constitutional issues on the merits, CNI and Avoyelles raised the First Amendment questions at issue in this Petition before the Louisiana Supreme Court on January 21, 1999. On April 1, 1999, the Louisiana Supreme Court denied CNI's Application by a 4-3 vote. (App. C)

The federal question in this Petition was properly and timely presented to the Louisiana Supreme Court after the Court of Appeal decided it *sua sponte* in its December 23, 1998 opinion in a posture that binds CNI. The Louisiana Supreme Court's denial of CNI's application for writ represents a final decision of the federal question presented in this Petition. Accordingly, this Court has jurisdiction to consider that decision at this stage. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

REASONS FOR GRANTING THE WRIT

This case presents an important question of First Amendment law on which this Court has heretofore reserved decision. *See Florida Star v. B.J.F.*, 491 U.S. 524, 535 n.8 (1989) (reserving question of First Amendment protection for publication of information of public concern unlawfully acquired by a source).

Despite the absence of Supreme Court authority on the narrow question presented in this Petition, the decision of the Court of Appeal is in direct conflict with the principles underlying the holdings of four decisions of this Court, and it also conflicts with the decisions of lower courts in nearly identical cases.

In *Florida Star*, this Court held that the First Amendment prohibits states from penalizing the accurate publication of innocently obtained information on a matter of public concern, unless the punishment is "narrowly tailored" to serve a state interest of the "highest order." 491 U.S. at 541. Yet without citing *Florida Star* or other applicable authority of this Court, the Court of Appeal held that the First Amendment does *not* protect Petitioner CNI from liability under the Louisiana Electronic Surveillance Act, La. R.S. 15:1302-1312 (the "Act"), for publishing an accurate report of information revealed to it at a public press conference by a person who had obtained an unlawfully taped conversation between two public officials.

This case arises from a report on a matter of grave public concern: evidence of alleged corruption by a member of the judiciary. For purposes of this Petition, CNI does not dispute that its source, Carol Aymond, furnished evidence that had been obtained in violation of the Act. But there is *no* contention in this case that the press was involved in any unlawful taping – to the contrary, CNI learned of the taped conversation only when Aymond placed it in the public domain by playing it at a public press conference.

This case brings into sharp relief the compelling public interest in ensuring the integrity of the judiciary and the importance of the role of a free press in reporting such matters. *See, e.g., Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 839 (1978) ("The operation of the Virginia [Judicial Inquiry and Review] Commission, *no less than the operation of the judicial system itself, is a matter of public interest, necessarily engaging*

the attention of the news media.") (emphasis added). The Louisiana Court of Appeal's conclusion that the press cannot report on publicly revealed evidence of judicial misconduct without incurring liability under the Act amounts to a complete rejection of the First Amendment protections established by this Court in *Florida Star* and the line of cases that preceded it.

It merits note that the Louisiana Act is modeled on the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510-2522 (the "federal wiretap statute"). Specifically, both the Louisiana Act and the federal wiretap statute generally prohibit the disclosure of an unlawfully intercepted communication. *See* La. Rev. Stat. Ann. § 1303(A)(3); 18 U.S.C. § 2511(c). At least two decisions interpreting the constitutionality of the federal wiretap statute's prohibition on disclosure of unlawfully intercepted communications (as applied in similar circumstances) are under review by the federal circuit courts.[2] Consequently, the national ramifications of this issue – and the importance of a decision by this court to bring certainty to this area of the law – cannot be overstated.

I.

THE COURT OF APPEAL'S DECISION CONFLICTS WITH THIS COURT'S DECISIONS HOLDING THAT PUBLICATION OF TRUTHFUL INFORMATION REGARDING MATTERS OF ACUTE PUBLIC CONCERN IS PROTECTED UNDER THE FIRST AMENDMENT.

This Court has expressly held that the First Amendment prohibits states from punishing the press for

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[2] *Boehner v. McDermott*, 1998 WL 436897 (D.D.C. July 28, 1998) (D.C. Cir. No. 98-7156) (decision pending); *Bartnicki v. Vopper* (3d Cir. No. 98-7156) (decision pending regarding constitutionality of federal wiretap statute and parallel Pennsylvania act).

accurately publishing lawfully acquired information of public concern. *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (holding that First Amendment protected newspaper's publication of rape victim's name, where newspaper had lawfully obtained information not available for public inspection).[3] To that end, this Court has repeatedly held that the First Amendment generally prohibits the states from imposing penalties on newspapers for publication of lawfully-obtained, truthful information relating to even private matters. *See Smith v. Daily Mail Publ. Co.*, 443 U.S. 97 (1979) (holding First Amendment protected newspaper's publication of name of juvenile offender despite state law to the contrary); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978) (holding First Amendment protected newspaper's publication of confidential inquiry before Judicial Inquiry and Review Commission); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975) (holding First Amendment protected broadcaster's right to publish name of rape victim despite state law prohibition). In its decision, the Court of Appeal cited none of these controlling decisions, and its analysis does not reflect the legal rules contained therein. *See* App. A.

In *Florida Star*, the Court specifically declined to decide the narrow question whether the First Amendment bars liability for the accurate publication of information that was unlawfully acquired by a source, and held only that the First Amendment protects the accurate publication of lawfully obtained information. 491 U.S. at 535 n.8; *see also Landmark Communications*, 435 U.S. 829, 837 (1978); *New York Times Co. v. United States*, 403 U.S. 713 (1971). This case squarely presents that precise question in the context of a

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[3] Though the government "source" in *Florida Star* did not *obtain* the information unlawfully, its *release* of information that was not open to inspection by the public facilitated the newspaper's publication in violation of state law. 491 U.S. 531. The government's colorable violation of state law led to a settlement of the plaintiff's claim before trial for $2,500.

report on a matter of intense public importance. This Petition does *not* present the broader question whether publication of any truthful information may ever be punished consistent with the First Amendment.

II.
THE INFORMATION AT ISSUE IN THIS CASE IS A MATTER OF GRAVE PUBLIC CONCERN, AND THE STATE LACKS AN INTEREST OF "THE HIGHEST ORDER" IN PUNISHING ITS PUBLICATION.

In *Florida Star*, this Court held that "where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order . . . ." 491 U.S. at 541. The protection of public officials from the release of evidence of official misconduct is not a "state interest of the highest order" sufficient to justify punishment of CNI's accurate report. In *Florida Star* and *Cox*, this Court held that even the strong state interest in protecting against disclosure of the identities of rape victims was not sufficient to overcome the First Amendment protections at stake. Similarly, in *Landmark Communications*, this Court held:

> Moreover, neither the Commonwealth's interest in protecting the reputation of its judges, nor its interest in maintaining the institutional integrity of its courts is sufficient to justify the subsequent punishment of speech at issue here, even on the assumption that criminal sanctions do in fact enhance the guarantee of confidentiality. Admittedly, the commonwealth has an interest in protecting the good repute of its judges, like that of all other public officials. Our prior cases have established, however, that injury to official

> reputation is an insufficient reason "for repressing speech that would otherwise be free."

Landmark, 435 U.S. at 841-42 (citations omitted) (emphasis added). Here, the allegations of judicial corruption contained in CNI's report are not the deeply private matters at issue in *Florida Star* and *Cox* – they are fundamentally *public* matters.

The integrity and ethics of government officials, including members the judiciary, are inherently matters of significant public concern. Indeed, the public interest in ensuring judicial integrity often outweighs the privacy interests of individual judges. *See In re Kading*, 235 N.W.2d 409, 417-18 (Wis. 1975) (identifying "paramount public interests" in assuring judicial integrity) (emphasis added). Contrary to the Court of Appeal's reasoning, the privacy interests of public officials do not outweigh the First Amendment protections for the publication of truthful information about them – they are subordinate to the overriding public interest in guarding against official corruption.

As this Court later held in *Butterworth v. Smith*, 494 U.S. 624 (1990), the First Amendment prohibits efforts "to punish the publication of information relating to alleged governmental misconduct – speech which has traditionally been recognized as lying at the core of the First Amendment." *Id.* at 632. The *Butterworth* Court held that even the historic interest in grand jury secrecy was insufficient to warrant a ban on disclosure of testimony by a witness. *Id. A fortiori*, no compelling state interest in punishing publication of the truth about allegations of judicial corruption exists in this case.

If the First Amendment were as insubstantial a shield as the Court of Appeal held, then the press would also be subject to potential liability for reporting on the recent impeachment of President Clinton – an event of public

concern that stemmed largely from the contents of intercepted wire communications, allegedly performed in violation of a state wiretap law. To preserve core First Amendment values, the press cannot constitutionally be punished for accurately publishing information of public concern – however generated – once the source of the information has placed it in the public domain. To place the onus on a newspaper to keep secret that which has become public knowledge turns the First Amendment on its head. It is the duty of the press to report on allegations of official misconduct so the truth will out – and the citizenry be informed.

III.

THE COURT OF APPEAL'S HOLDING CONFLICTS WITH THE DECISIONS OF LOWER FEDERAL COURTS ON NEARLY IDENTICAL FACTS.

In three cases, two United States district courts have recently confronted the question whether the First Amendment protects subsequent publication of unlawfully taped conversations where the information is in the public interest. Each concluded that it does.[4]

In *Peavy v. New Times, Inc.*, 976 F. Supp. 532 (N.D. Tex. 1997), a newspaper published the contents of an illegally taped conversation involving a school board official. There, as here, the newspaper had no role in committing the

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[4] At least one state court has concluded that the media defendant may be liable for publishing purely *private* information. *Natoli v. Sullivan*, 159 Misc.2d 681, 606 N.Y.S.2d 504 (Sup.Ct.1993), *aff'd*, 206 A.D.2d 841, 616 N.Y.S.2d 318 (App.Div.1994). Because the information in this case is of the highest public concern, clarification of the scope of First Amendment protection is warranted.

unlawful interception, but simply acquired a copy of the tape once it had been placed in the public domain. The court unequivocally held that "the federal wiretap act cannot be constitutionally applied to prohibit the newspaper and its editor from publishing the transcript of a telephone conversation which was read at the public school board meeting, *even assuming that they knew the conversation had been illegally recorded* by some unknown person." *Id.* at 534 (emphasis added).

As the *Peavy* court recognized:

> The guiding principle articulated in *Smith v. Daily Mail Publishing Co.*, which is used to address attempts to punish truthful publication, is this: "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." Relevant to this inquiry are three considerations: (1) whether the newspaper "'*lawfully* obtain[ed] *truthful* information about a matter of public significance;'" (2) whether imposing liability on the defendant serves a "need to further a state interest of the highest order;" and (3) whether allowing the media to be punished for publishing the information would result in "timidity and self-censorship."

976 F. Supp. at 538 (emphasis in original). Here, CNI lawfully obtained the tape under the standards articulated in *Florida Star*, there is no cognizable state interest of the highest order in protecting against public disclosure of alleged official corruption, and the Louisiana Court of Appeal's decision will surely have an unconstitutional chilling effect on the publication of information in the public interest.

In reaching its result, the *Peavy* court properly followed the analysis dictated by the unwavering precedent of this Court. Importantly, it recognized that the countervailing interests at issue seldom satisfy the constitutional requirement of being interests "of the highest order":

> In *Daily Mail*, the Supreme Court held that the state interest in protecting the anonymity of a juvenile offender was not substantial to permit the state to punish the publication of the offender's name, lawfully obtained. In *Florida Star*, the court held that a statute under which a newspaper was punished for publishing the identity of a rape victim did not serve a "state interest of the highest order." Finally, in *Landmark Communications, Inc. v. Virginia*, the Supreme Court concluded that the state interests in prohibiting publication of confidential proceedings before a judicial conduct review committee was not sufficiently substantial enough to justify the encroachment on First Amendment guarantees. *Certainly, in light of these precedents, the interest in protecting the statutory privacy rights of Peavy, an elected official, is not compelling enough to warrant infringement on the constitutional rights of the Defendants to publish matters of paramount public import. While the privacy interest at stake here is less than compelling, the public interest in the publication of these transcripts, on the other hand, is great.*

976 F. Supp. at 539 (citations omitted) (emphasis added).

A television station's broadcast of the same illegally taped conversation led to a similar decision in *Peavy v. WFAA-TV*, Inc., 37 F. Supp. 2d 495 (N.D. Tex. 1999) ("*Peavy II*"). In both cases, the courts granted summary judgment for the media defendants based on the principle that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information,

absent a need to further a state interest of the highest order." *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 103 (1979).

Noting that "[n]o court has ever addressed whether the government may punish a media defendant for publishing truthful information that has been unlawfully acquired by a source," the *Peavy II* court concluded that the media's innocent acquisition of unlawfully obtained evidence through a legitimate newsgathering technique triggered First Amendment protection. 37 F. Supp.2d at 516. Concluding that the media had obtained the information lawfully because it had used a "routine newsgathering technique," the *Peavy II* court relied on this Court's holding that a "'journalist is free to seek out sources of information . . . and . . . government cannot restrain the publication of news emanating from such sources.'" *Id.* (quoting *Pell v. Procunier*, 417 U.S. 817, 834 (1974)).

The *Peavy II* court articulated the proper synthesis of this Court's earlier decisions: "As long as a media defendant does not personally intercept a protected communication or procure another to do so, any information acquired through legitimate newsgathering techniques is 'lawfully obtained.'" *Id.* There, as here, the media defendants had no role in committing the unlawful interception, but simply reported information they gathered through "routine newsgathering" techniques after it entered the public domain.

Moreover, this Court consistently has held that privacy interests of public officials, in particular, often must bow to the media's First Amendment rights. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (truth is an absolute defense to defamation, and even publication of false information about public officials requires a showing of actual malice); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 334 (1974).

The *Peavy II* court recognized that the privacy right at issue "is not the constitutional right of privacy – that is "the right to be left alone" from government intrusion into personal and intimate decisions and beliefs. 37 F. Supp. 2d at 517 (citing *Carey v. Population Services Int'l*, 431 U.S. 678, 684-85 (1977). Rather, the privacy rights there, as here, are statutory and, while certainly important, "they fare poorly against the constitutional rights of a free and unfettered press." *Id.*

Shortly after the decision in *Peavy I*, the United States District Court for the District of Columbia faced a nearly identical issue. In *Boehner v. McDermott*, 1998 WL 436897 (D.D.C. July 28, 1998), Rep. John Boehner filed an action against Rep. James McDermott after McDermott released copies of a tape of an unlawfully intercepted telephone conversation between, among others, Boehner, Rep. Newt Gingrich and Rep. Richard Armey. Boehner sought relief under the federal wiretap statute and its Florida counterpart. Following the same analysis employed by the *Peavy* court, the *Boehner* court concluded that the First Amendment protected the disclosure of the tape.

The *Boehner* court specifically followed this Court's authority:

> [T]he relevant case law seems to suggest that information not illegally acquired is lawfully obtained, even though its source may have obtained it illegally. For example, in the *Florida Star* case, the Duval County Sheriff's Department inadvertently published the name of a rape victim on a public blotter sheet, even though a state statute prohibited publication of such information. The police department was unquestionably liable for breaking the law, and it eventually settled a suit against it; however, the Supreme Court held that newspapers publishing the name were not liable. In holding the papers free from liability, the Court

> held that the information taken off the police blotter, to which the press had lawful access, was lawfully obtained by the newspapers. *Florida Star*, 491 U.S. at 534.

1998 WL 436897, at *4. Here, CNI had lawful access to the press conference, and its publication is similarly protected from liability. As in *Boehner*, the privacy interest embodied in the Act is insufficient to outweigh the First Amendment protections:

> Although protection of privacy is certainly a substantial government interest, it is not clear that it is an interest "of the highest order," such that it can trump defendant's First Amendment rights. The rape victims in *Florida Star* and *Cox Broadcasting* each had a substantial interest in privacy and anonymity, yet that interest was insufficient to overcome the First Amendment rights of the entities that printed or broadcast their names. Taking these cases as models for the present one, the Court cannot see how the government interest in protecting privacy of wire, electronic or oral communication is of any higher
>
> order than the protection of privacy for rape victims.

1998 WL 436897, at *7.

Had the Louisiana Court of Appeal followed the analysis that the First Amendment requires, it would have been compelled to reach the same conclusion reached by the *Peavy* and *Boehner* courts: the First amendment protects such reportorial activities, and the suit should be dismissed as a matter of constitutional law.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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